* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ CRL.REV. PETITION NO. 691/2003

Reserved on: January 15, 2007
Decided on: March 5, 2007.

GURBIR SINGH ……PETITIONER
Through: Mr. Naveen Malhotra, Advocate

VERSUS

STATE & ANR. ……RESPONDENTS
THROUGH: Mr. Vivek Sood, Advocate for R-2.
Mr. O.P. Saxena, Advocate for the State.

CORAM:

Mr.Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat:

1. The petitioner invokes the revisional jurisdiction of this Court under Sections 397/401 of the Criminal Procedure Code (Cr.P.C.); he impugns an order dated 25.10.2002 by the Metropolitan Magistrate, issuing summons and rejecting the application for exemption.

2. One Vidya Bhushan Bhatnagar, who died during the course of criminal proceedings (and was substituted by his wife during the course of these

proceedings, namely, Madhu Bhatnagar), filed a complaint alleging that the petitioner along with others were guilty of committing offences under Sections 406/420/421/506 IPC read with Section 120A IPC. The complainant used to import Pharmaceutical materials and export finished products, namely, medicines after obtaining advance licences issued to him under the name and style of M/s. Primox India and subsequently under the style "Medipharm". He was issued advance licences for the import of raw-material of Tetracycline Thiamine HCL and Riboflavin HCL. The complainant alleged that the petitioner and his brother suggested that he should import raw-material for which they allegedly offered financial assistance. In return, the complainant alleged that the goods were to be pledged to them and were to be returned after repayment of the loan. According to the complainant, in terms of this arrangement, an amount of Rs.21.95 lakhs was given to him he opened the account of M/s. Medipharm on 5.10.1994 and imported raw-materials. The allegations thereafter were that the goods were cleared by one G.S. Kathuria and secretly removed by the petitioner and his associates. The complainant also alleged that after handing over the raw-material for manufacture, the petitioner, instead of awaiting completion of export obligations by the complainant, insisted for repayment of the amount and intimidated him with a revolver. It was also alleged that the entire imported material, with a CIF value of about Rs.66 lakhs, was with the petitioner and the other co-accused who sold them unauthorisedly to Accused No.4 and appropriated the entire sale proceeds at

Rs.1.2 crores.

3. The complainant further alleged that the petitioner had planted 1000 Kgs. of Thiamine HCL imported on 20.9.1994 by sending them to the godown of Shri Ramesh C. Shah and got a raid conducted by the Directorate of Revenue Intelligence (DRI) on false allegations. This led to filing of certain proceedings under the Customs Act.

4. The complaint was directed to be investigated by the police under Section 156(3). The report submitted suggested that no offence was made out. The material part of the police report reads as follows:

> *"In the conclusion, it is submitted that only money transaction is proved on record and no document is available to prove the pledging of goods. DRI personnel arrested Mr. V.B. Bhatnagar and Sunil Ahuja and both spent a considerable time behind bar. No documentary proof is available to prove role of Kathuria except money delivery. The most noticeable point being the contradiction in the statement regarding introduction of V.B. Bhatnagar & Others. Forwarded pl.*
>
> *R.S. Yadav,*
> *Sd/- SHO, Shahdara"*

5. After considering the materials i.e. the complaint and the statement of the complainant, the trial court issued the summoning order on 25.10.2002. On 4.9.2003, the Court rejected the application moved by the petitioner for exemption.

6. It is contended that the procedure adopted by the Magistrate, namely, issuing the summoning order, without accepting the report or rejecting it, is alien to law. It was submitted that once the Court directed the police to investigate the

complaint and a report recommending closure was made, the Magistrate, could not have issued the summoning order, since no fresh material was brought to his notice.

7. It was also contended that the only statement recorded in the course of the proceedings was that the complainant who has since died. If the same were to be taken into account as well as attended circumstances, the impugned summoning order was issued mechanically and without any grounds.

8. Learned counsel also urged that the complaint was off-shoot of the proceedings drawn up by the Department of Revenue Intelligence in which the deceased complainant had been implicated and had to face penal action. The ingredients necessary to make out an offence against the petitioner and the other accused were completely lacking.

9. On the behalf of the respondents, particularly the complainant who has now been substituted by his wife in these proceedings, it was contended that the Magistrate despite the police report suggesting closure is not bound by it and in terms of other provisions of the Code of Criminal Procedure is empowered to take cognizance if the materials on record justify such a course. Learned counsel relied upon the judgment of the Supreme Court reported as *Jagdish Ram vs. State of Rajasthan and Another*, (2004) 4 SCC 432. He also relied upon the judgment reported as *Dy. Chief Controller of Imports & Exports vs. Roshanlal Agarwal and Ors.*, (2003) 4 SCC 139 for the purpose that the Magistrate while issuing process

under Section 204 read with 190(1)(a) is not require to record reasons. Learned counsel contended that the Magistrate has to be just satisfied as to whether there are sufficient grounds for proceeding and not, whether sufficient grounds exist for conviction. Other judgments to the same effect were also cited.

10. Learned counsel also relied upon the ruling of the Supreme Court in *Jimmy Jahangir Madan v. Bolly Cariyappa Hindley*, AIR 2005 SC 48 submitted that it is open to the heirs of the complainant to be represented in the proceedings before the criminal court.

11. The reading of the complaint with the deposition of the deceased Vidya Bhushan Bhatnagar shows that he distinctly alleged about representations by the petitioner regarding financial assistance, import of raw-material, holding out of threats and alleged unauthorised sale of the materials worth substantial amounts – stated to be Rs.1.2 crores. In another proceeding having regard to over all nature of the allegations, the involvement of the co-accused (Ramesh C. Shah) was held to not have been established and, therefore, his revision petition was allowed. The question, therefore, is whether in this case, the petitioner is entitled to a similar relief.

12. The complaint has levelled about an understanding between the petitioner, and another co-accused with himself pursuant to which an amount of Rs. 21.95 lakhs was said to have been advanced, details of that amount by way of cheques etc. have been disclosed in Para 3 of the complaint. He further alleged that the

concern M/s. Ekam Chemicals compelled him to open an account for the financing of purchase of raw-materials to the tune of Rs.22 lakhs. He also alleged that three consignments imported initially were got released by the petitioner and his associates for which necessary papers such as bills of entry were signed; they were allegedly cleared. He further alleged that the goods were secreted to some unknown place. The complainant averred that the petitioner had placed an order for import of some other raw-materials which were released in their favour and stored. The import orders were placed by them allegedly by using the import licences issued to M/s. Medipharm, the complainant. It was also alleged that all the materials were secreted away and despite his entreaties they were not returned. The petitioner apparently warned the complainant of dire consequences and threatened him with a revolver. It was further alleged in paragraph 10-11 that the goods were sold unauthorisedly for the sum of Rs. 1.2 crores. The complainant Vidya Bhushan Bhatnagar supported his complaint with a statement before Court on 12.10.2000.

13. When a complainant approaches it under Section 200 or seeks intervention under Section 156(3), the Court can call upon the police to investigate into the matter and file a report. It can choose the alternative mode of proceeding upon the complainant straightway. After receiving the report of the police, the Court can either accept recommendations and drop further proceedings or, if satisfied that the materials as existing before it justify the matter to be taken further, it may choose

to do so. This is indicated on a conjoint reading of Section 190(1)(a) of the Code and Section 204. The police report in this case was furnished to the Court on 11.4.1998. The statement of the complainant was recorded later on 12.10.2000. The Magistrate, therefore, clearly issued the summoning order after considering the police report which had stated that there was no documentary material in support of the allegations. The course of action adopted by the trial Court, in my considered opinion, cannot be characterised as contrary to law – it legitimately exercise jurisdiction vested in it.

14. As to the desirability or otherwise the impugned order, the law is clear. The Magistrate is not expected to see whether the materials on record may eventually lead to an conviction. That conclusion necessary as to await the trial. All that he is required to see is whether the complaint makes out a case for summoning the accused and issuing process. In that sense the threshold is lower. The judgment of the Supreme Court, in *Dy. Chief Controller of Imports & Exports'* case (supra) is clear on the issue. As far as the materials and circumstances (or the lack of it) in view of the demise of the complainant are concerned, that is a detail which ought not to weigh with this Court, at the stage of considering the correctness of the summoning order. The Court is not exercising an intrusive role and weighing the nature of the evidence. I am, therefore, satisfied that there is no infirmity in the order of the trial court requiring correction or interference.

15. For the above reasons, the petition has to fail, it is dismissed.

March 05, 2007

(S. RAVINDRA BHAT)
JUDGE